

ENTERED

March 22, 2024

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**BERRY RAYDELL FREEMAN,
(TDCJ # 02413382)

Plaintiff,

vs.

RODGER E. BOWERS, *et al.*,

Defendants.

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CIVIL ACTION NO. H-24-414

MEMORANDUM OPINION AND ORDER

The plaintiff, Berry Raydell Freeman, (TDCJ # 02413382), is a state inmate incarcerated at the Wynne Unit of the Texas Department of Criminal Justice-Correctional Institutions Division. Representing himself, he filed a handwritten letter alleging that 13 TDCJ officials violated his constitutional rights during a period of excessive heat in the summer of 2023. (Docket Entry No. 1). Freeman did not pay the filing fee or move to proceed without prepaying the filing fee. The court construed Freeman's pleading as a prisoner's civil rights complaint under 42 U.S.C. § 1983 and ordered him to file an amended complaint using the approved form for such complaints. (Docket Entry No. 3). The court also ordered Freeman to either pay the \$405.00 filing fee for a civil rights action or file a properly supported motion to proceed without prepaying the filing fee. (*Id.*). The court provided Freeman with the appropriate forms and warned him that failure to timely comply with the court's order could result in dismissal of his action without further notice under Federal Rule of Civil Procedure 41(b). (*Id.*).

To date, Freeman has not filed an amended petition, paid the filing fee, or filed a properly supported motion for leave to proceed without prepaying the filing fee. His time to do so under the court's order has expired. Freeman's failure to take action forces the court to conclude that he

lacks due diligence. Dismissal for want of prosecution is appropriate. *See* FED. R. CIV. P. 41(b); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) (a district court may dismiss an action on its own for failure to prosecute or to comply with any court order).

Freeman may seek relief from this order under Federal Rule of Civil Procedure 60(b) if he can show good cause for failing to comply with the court's order and the local rules. Any motion under Rule 60(b) must be accompanied by an amended complaint on the proper form and either the filing fee of \$405.00 or a properly supported motion to proceed without prepaying the filing fee, including a certified copy of the inmate trust fund account statement.

Freeman's complaint, (Docket Entry No. 1), is dismissed without prejudice for want of prosecution. Any pending motions are denied as moot.

SIGNED on March 22, 2024, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is fluid and cursive, with a large, sweeping loop at the end of the last name.

Lee H. Rosenthal
United States District Judge